stock, it was *held* that "debts" does not include the liability of a corporation for a tort, and that even when the claim is reduced to judgment the shareholder may go behind it and show that the claim is not recoverable under the statute. *Clinton Mining & Mineral Co.* v. *Beacom* (July 3, 1920), 266 Fed. 621.

The reasoning of the decision is put upon the basis that since this statute is an increase of the common law liability of the stockholder, and since a number of terms of clearly defined legal meanings are used in the statute, the intent of the makers was that a strict construction should be applied, and the technical meaning of debt as a "sum certain" or "liability arising out of contract" should be adopted. Since the injury for which judgment had been given against the corporation was for a tort, this was not an obligation that the corporation could legally incur, and, it is argued, the statute-makers could not have intended to hold shareholders for debts they could not have conceived the corporation incurring at the time they entered a contract relation in becoming subscribers for stock. While it is true that no presumption may be raised that the stockholder contracted with reference to the commission of any *ultra vires* acts on the part of the corporation, it is certainly true that the intent of the statute is to be remedial and to prevent shareholders from escaping by means of the corporate fiction from just such illegal or tortious acts. As to the party injured, the shareholders, to the amount of their unpaid stock, certainly appear in the light of responsible parties. That the above technical construction of such statutes increasing the common law liability of stockholders has not always been followed appears in the view of Judge Story in the early case of *Carver* v. *Braintree*, 2 Story (U. S. C. C.) 432, in which he holds that "debts contracted" may be construed as "liabilities incurred" and should include all cases of claims, whether liquidated or unliquidated, arising either *ex delictu* or *ex contractu*. This broad stand has since been disapproved in numerous cases. *Doolittle* v. *Marsh*, 11 Neb. 243, 9 N. W. 54; *Heacock* v. *Sherman*, 14 Wend. 58; *Cable* v. *McCune*, 72 Am. Dec. 214. For other cases of this type, see 22 L. R. A. (N. S.) 256. But in *Cohen* v. *Jay Gun Mfg. Co.*, 185 Mo. App. 330, the court holds, in construing a statute almost identical with that in the principal case, that a judgment, whether founded on tort or contract liability, is a "debt," and a recovery may be had therefor under such a statute. The expression, "debts unpaid," has been considered sufficient to include the obligation of a corporation to pay for coal illegally mined and to hold the stockholders of the offending corporation for its value. *Abernathy* v. *Loftus*, 87 Kan. 95. "Dues" has usually been held to include liability for tort judgments, in cases of remedial statutes. *Henley* v. *Meyers*, 76 Kan. 723. While the more elastic phrase, "debts and liabilities," is generally construed to meant tort liabilities as well as those of contract.

DAMAGES—MEASURE OF, WHEN INJURY IS CAUSED BY A "PERMANENT STRUCTURE."—The defendant so built its railway as to flood 56 acres of the plaintiff's 138-acre farm. There was a suit and recovery for this. The cause of action as alleged was based on the building of the grade and the erection

of pilings. In the instant case a further recovery was sought for damages caused by the "improper construction of the defendant's track." It was *held,* that since the plaintiff had elected to treat his first suit as a vehicle for recovery for permanent injury, thus obtaining payment on the basis that the value of the farm had been impaired for all time, he was "estopped" to bring suit for subsequently accruing damages to a crop. *Thompson* v. *Ill. Central Ry. Co.* (Iowa, 1920), 179 N. W. 191.

The court argued that there was not any distinction in the two causes of action alleged but even admitting that there was such a distinction, nevertheless "the naked fact that a third means for producing these results was for the first time urged in the second suit will not make the first suit less effective as an estoppel than if all three means that caused the injury had been named in both suits." It was decided in *Stodgill* v. *Chicago Railroad,* (1880), 53 Iowa 341, that a railroad was a "permanent structure." In *Bennett* v. *City of Marion,* (1903), 119 Iowa 473, it was held that a sewer system was not a "permanent structure." In *Uline* v. *Ry.,* (1886), 101 N. Y. 98, it was held that a railway embankment was not a "permanent structure." It is generally admitted that for an injury caused by a "permanent structure" the measure of damages is the permanent depreciation in the value of the land, and that there cannot be successive suits for successive losses. *Chicago Ry.* v. *Loeb,* (1884), 118 Ill. 203; *Highland A. Ry. Co.* v. *Mathews,* (1892), 99 Ala. 24; *Jacksonville, etc., Ry. Co.* v. *Lockwood,* (1894), 33 Fla. 573; *Allen* v. *Macon D. and S. Ry. Co.,* (1899), 107 Ga. 838. The argument in the instant case seems to turn on the distinction between (1) a "permanent structure" causing a nuisance, and (2) a structure which, although in itself "permanent", "may or may not be injurious" in the future. In (1) it is admitted, as stated above, that there can be but one recovery, although the structure causes repeated losses—the recovery being for permanent depreciation. See cases cited *supra.* If "permanent structure" is used as in (2), then the recovery in the first suit is limited to the loss occurring before the trial, and successive suits may be brought for recurring injuries. *Carl* v. *Sheboygan Ry. Co.* (1879), 46 Wis. 625; *Harmon* v. *Railroad,* (1889), 87 Tenn. 614; *Savannah Ry. Co.* v. *Bourquin,* (1874), 51 Ga. 378; *Railroad* v. *Biggs,* (1889), 52 Ark. 240; *Canal Corporation* v. *Hitchings,* (1876), 65 Me. 140; *Troy* v. *Ry. Co.,* 3 Foster, (N. H.), 83. See also the *Harvey Case,* (1906), 129 Iowa, 465, a leading case reviewing many of the authorities. The court in the instant case held that since the trial court in the first suit adopted (1), the plaintiff in this suit was "estopped", as it said, from resorting to (2). The failure of the courts to distinguish between these two theories is the cause of much confusion in the decisions. The instant case illustrates very well how such confusion may arise. After the case is properly placed in either of the two above categories it is easy to apply the governing principles, which are simple and well settled.

DEEDS—DELIVERY IN ESCROW TO GRANTEE.—P delivered a contract under seal to purchase land of D, but delivery was made conditional upon D obtaining an amendment to a bank charter. D, though unable to obtain the amendment, nevertheless started a suit at law to recover the purchase money under